



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Employment Security Department

- ☒ Preproposal Statement of Inquiry was filed as WSR 08-14-160 ; or
☐ Expedited Rule Making--Proposed notice was filed as WSR _____; or
☐ Proposal is exempt under RCW 34.05.310(4).

- ☒ Original Notice
☐ Supplemental Notice to WSR _____
☐ Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject) WAC 192-150-170, Meaning of good cause—RCW 50.20.050(2). The proposed new rule specifies the circumstances under which an individual may establish good cause for voluntarily leaving work other than those good cause reasons enumerated in the statute. WAC 192-16-009 is repealed.

Hearing location(s):

Employment Security Department
Maple Leaf Conference Room
212 Maple Park
Olympia, Washington

Submit written comments to:

Name: Pamela Ames, Agency Rules Coordinator
Address: Employment Security Department, P.O. Box 9047
Olympia, WA 98507-9047
e-mail pames@esd.wa.gov
fax (360) 902-9569 by (date) April 6, 2009

Date: April 7, 2009 Time: 10:00 a.m.

Assistance for persons with disabilities: Contact

Beverly Peterson by April 6, 2009

TTY (360) 902-9569 or (360) 902-9234

Date of intended adoption: April 17, 2009
(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This filing adopts a new rule in Chapter 192-150 WAC, Job Separations. The rule describes the conditions under which an individual may establish good cause for voluntarily leaving work for reasons other than the 11 enumerated in statute. WAC 192-16-009 is repealed. It lists the factors under which an individual could establish good cause for quitting work prior to January 1, 2004, and is obsolete.

Reasons supporting proposal: On June 19, 2008, the Washington Supreme Court issued a published opinion holding that the list of 11 reasons listed in RCW 50.20.050(2) as constituting good cause for voluntarily leaving work was not exclusive. The court held that the department has the responsibility to consider whether other factors constitute the requisite good cause. Existing rules address only the 11 good cause reasons listed in the statute. The proposed rule explains the other factors that will be considered by the department, as required by the court.

Statutory authority for adoption: RCW 50.12.010, RCW 50.12.040, RCW 50.20.010

Statute being implemented: RCW 50.20.050

Is rule necessary because of a:

Federal Law? ☐ Yes ☐ No
Federal Court Decision? ☐ Yes ☐ No
State Court Decision? ☐ Yes ☐ No
If yes, CITATION: ☒ Yes ☐ No
Spain v. ESD (79878-8) consolidated with
Batey v. ESD (80309-9)

DATE 11-7-08

NAME (type or print)
Paul Trause

SIGNATURE

TITLE Deputy Commissioner

CODE REVISER USE ONLY

12:01
08.23.024

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:
None.

Name of proponent: (person or organization) Employment Security Department

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Juanita Myers	212 Maple Park, Olympia	(360) 902-9665
Implementation.....Nan Thomas	212 Maple Park, Olympia	(360) 902-9303
Enforcement..... Nan Thomas	212 Maple Park, Olympia	(360) 902-9303

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☐ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

☒ No. Explain why no statement was prepared.

The proposed rule is mandated under the Washington Supreme Court's ruling. Any impact created by the rule affects all businesses, not just small businesses. Separations from work based on undue hardship to the employee constitute only about 1-2% of voluntary quits.

Is a cost-benefit analysis required under RCW 34.05.328?

☒ Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Juanita Myers

Address:

Employment Security Department

PO Bo 9046

Olympia, WA 98507-9046

phone (360) 902-9665

fax (360) 902-9799

e-mail jmyers@esd.wa.gov

☐ No: Please explain:

NEW SECTION

WAC 192-150-170 Meaning of Good Cause—RCW 50.20.050(2). (1) **General.** RCW 50.20.050(2) provides that you will not be disqualified from receiving unemployment benefits when you voluntarily leave work for good cause. The Washington Supreme Court in *Spain v. Employment Security Department* held that the factors listed in RCW 50.20.050(2)(b) are not the only circumstances in which an individual has good cause for voluntarily leaving work. While these are considered *per se* or stand alone good cause reasons, the court held that the department is required under RCW 50.20.050(2)(a) to consider whether other circumstances constitute good cause for voluntarily leaving work.

(2) **Other factors constituting good cause—RCW 50.20.050(2)(a).** The department may determine that you had good cause to leave work voluntarily for reasons other than those listed in RCW 50.20.050(2)(b).

(i) For separations under subsection (3) below, all of the following conditions must be met to establish good cause for voluntarily leaving work:

(A) You left work primarily for reasons connected with your employment; and

(B) These work-connected reasons were of such a compelling nature they would have caused a reasonably prudent person to leave work; and

(C) You first exhausted all reasonable alternatives before you quit work, unless you are able to show that pursuing reasonable alternatives would have been futile.

(ii) **Substantial involuntary deterioration of the work.** As determined by the legislature, RCW 50.20.050(2)(b), subsections (v) through (x), represent changes to employment that constitute a substantial involuntary deterioration of the work.

(3) **Unreasonable hardship.** In addition to the good cause reasons listed in RCW 50.20.050(2)(b), other work-connected circumstances may constitute good cause if you can show that continuing in your employment would work an unreasonable hardship on you. “Unreasonable hardship” means a result not due to your voluntary action that would cause a reasonable person to leave that employment. The circumstances must be based on existing facts, not conjecture, and the reasons for leaving work must be significant.

Examples of work-connected unreasonable hardship circumstances that may constitute good cause include, but are not limited to, those where:

(A) Repeated behavior by your employer or co-worker(s) creates an abusive working environment.

(B) You show that your health or physical condition or the requirements of the job have changed so that your health would be adversely affected by continuing in that employment.

(3) **Commissioner Approved Training.** After you have been approved by the department for Commissioner Approved Training, you may leave a temporary job you have taken during training breaks or terms, or outside scheduled training hours, or pending the start date of training, if you can show that continuing with the work will interfere with your approved training.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-16-009 Disqualification for leaving work voluntarily—Meaning of good cause for claims with an effective date prior to January 4, 2004—RCW 50.20.050(1).